U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARCELO URIEGAS and DEPARTMENT OF THE AIR FORCE, KELLY AIR FORCE BASE, San Antonio, TX

Docket No. 03-217; Submitted on the Record;
Issued February 24, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant had more than an 11 percent monaural hearing loss for which he received a schedule award.

On June 24, 2001 appellant, then a 54-year-old pneudraulic system mechanic and tester, filed a claim alleging that he sustained permanent hearing loss while in the performance of duty. Appellant retired on July 3, 1999.

By letter dated August 30, 2001, the Office of Workers' Compensation Programs requested additional information. The Office gave appellant 30 days to submit additional evidence.

On October 26, 2001 the Office received the requested information, which was comprised of employing establishment and individual audiograms dated November 25, 1966 to October 2, 2001. The audiograms noted progressive hearing loss.

In a statement of accepted facts dated February 15, 2002, the Office noted that appellant was exposed to noise from ultrasonic cleaners, high-pressure air compressors and pneumatic tools of all types such as air impact guns, drills, sanders, grinders, hammers of all types, air hoists forklifts, air and electric presses and some noisy tests. In addition, it was noted that there were engines running and horns blowing. The safety devices used by appellant included earplugs and earmuffs. The Office stated that appellant was evaluated and received hearing evaluation by his employing establishment and was last exposed in July 1999, the date of his retirement.

By letters dated February 19 and 22, 2002, the Office referred appellant to Dr. Alan Dinesman, a Board-certified otolaryngologist, for otological examination and audiological evaluation. The Office provided Dr. Dinesman with a statement of accepted facts, available exposure information and copies of all medical reports and audiograms.

Dr. Dinesman evaluated appellant on March 12, 2002 and audiometric testing was conducted on the doctor's behalf the same date. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 revealed the following: right ear 20, 15, 40 and 55 decibels; left ear 15, 10, 20 and 40 decibels. Dr. Dinesman determined that appellant sustained high frequency sensorineural hearing loss consistent with a history of chronic noise exposure in the work environment.

On October 19, 2000 an Office medical adviser reviewed Dr. Dinesman's March 12, 2002 report and determined that the date of maximum medical improvement was March 12, 2002. The medical adviser evaluated the audiogram performed on behalf of Dr. Dinesman and concluded that appellant sustained employment-related monaural hearing loss of eleven percent in the right ear.

In a July 22, 2002 decision, the Office notified appellant that his occupational disease claim had been accepted for monaural hearing loss, right ear.

On July 20, 2002 appellant completed a Form CA-7 claim for compensation and schedule award.

In a decision dated September 24, 2002, the Office determined that appellant was entitled to a schedule award for an 11 percent permanent hearing loss in the right ear. The award ran for 5.72 weeks covering the period March 12 to April 12, 2001[1] at 75 percent of appellant's weekly earnings.

The Board finds that appellant has no more than an 11 percent work-related monaural hearing loss of the right ear.

Section 8107(c) of the Federal Employees' Compensation Act[2] specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage of loss of a member, function or organ shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.[3] For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.[4]

The Office evaluates industrial hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment,* fifth edition 2001.[5] Under the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the

[1] The date appears to be a typographical error as the Office used the proper dates when making the calculations and Dr. Dinesman's date of maximum medical improvement was March 12, 2002.

[2] 5 U.S.C. §§ 8101-8193, § 8107(c).

[3] *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

[4] *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961).

[5] 20 C.F.R. § 10.404 (1999).

losses at each frequency are added up and averaged.[6] Then the "fence" of 25 decibels is deducted since, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.[7] The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.[8] The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of binaural hearing loss.[9] In addition, the Office's procedures require that all claims for hearing loss due to acoustic trauma require an opinion from a Board-certified specialist in otolaryngology.[10] The procedure manual further indicates that audiological testing is to be performed by persons possessing certification and ideology from the American Speech Language Hearing Association, or state licensure as an audiologist.[11]

An Office medical adviser applied the Office's standard procedures to the March 12, 2002 audiogram performed for Dr. Dinesman. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibels losses of 20, 15, 40 and 55 respectively. These decibels were totaled at 130 and were divided by 4 to obtain an average hearing loss at those cycles of 32.5 decibels. The average of 32.5 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 7.5 which was multiplied by the established factor of 1.5 to compute 11.25 percent loss of hearing for the right ear.

Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibels losses of 15, 10, 20 and 40 respectively. These decibels were totaled at 85 and were divided by 4 to obtain the average hearing loss at those cycles of 21.25 decibels. The average of 21.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0 which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss for the left ear. This calculation results in an 11 percent monaural hearing loss for the right ear and a 0 percent hearing loss for the left ear.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Dinesman's March 12, 2002 report and the accompanying audiogram. The result is an 11 percent monaural hearing loss of the right ear and a 0 percent hearing loss of the left ear.

On appeal, appellant states that he does not feel that he was adequately compensated. The schedule award provisions of the Act specifies the number of weeks of compensation to be

[6] A.M.A., *Guides*, 246-55 (5th ed. 2001).

[7] *Id*. at 250.

[8] *Id*. at 250.

[9] *Id.* at 250.

[10] *Supra* note 3.

[11] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirement for Medical Reports,* Chapter 3.600.8(a)(2) (September 1994).

awarded for loss of hearing. For complete loss of hearing in one ear (monaural), the Act provides for 52 weeks of compensation. For complete loss of hearing in both ears (binaural), the Act provides for 200 weeks of compensation.[12] Compensation for partial loss is compensated at a proportionate rate.[13] Thus, an 11.25 percent monaural impairment[14] would equate to 11 percent of 52 weeks and would entitle appellant to 5.72 weeks of compensation, which the Office awarded.

Further, appellant alleged that the Office erred in determining that the period of his award ran from March 12 to April 12, 2001, almost two years after his retirement. However, the record reflects that the Office properly began the award from the date of maximum medical improvement[15] as determined by the audiogram testing and found by the Office's consulting physician, Dr. Dinesman, and the Office medical adviser. The period covered by a schedule award commences on the date that the employee reaches maximum medical improvement from the residuals of the employment injury.[16]

[12] 5 U.S.C. § 8107(c)(13).

[13] *Id*. at § 8107(c)(19).

[14] Percentages should not be rounded until the final percent for award purposes is obtained. Fractions should be rounded down from .49 or up from .50. Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4.b(2) (September 1994).

[15] As noted earlier, it appears the Office calculated the award properly from March 12, 2002; however, a typographical error was made in the award as March 12, 2001. This error appears to be harmless as the amount of the award does not appear to be affected.

[16] *Joseph R. Waples*, 44 ECAB 936 (1993).

The September 24, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
February 24, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member